

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO SECTIONS OF  
THE IDAHO BAR COMMISSION RULES  
(I.B.C.R.)

ORDER

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the Idaho Bar Commission Rules (I.B.C.R.), and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho Bar Commission Rules (I.B.C.R.), as they appear in the Idaho State Bar Desk Book and on the Idaho State Bar website be, and they are hereby, amended as follows:

1. That Rule 228 of SECTION II be, and the same is hereby, amended as follows:

## SECTION II Admissions

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### **RULE 228. Emeritus Attorney Limited License.**

- (a) **Admission to Limited Practice as Emeritus Attorney.** Upon application and approval in accordance with this rule, qualified attorneys may be admitted as Emeritus Attorneys to engage in the limited practice of law described below.
- (b) **Qualifications.** An attorney who is or had been actively licensed to practice law in any state or territory of the United States or the District of Columbia within the preceding five (5) years of the application, may apply to practice law as an Emeritus Attorney consistent with this rule. may apply for a license to practice law as an Emeritus Attorney who, for at least ten of the fifteen years immediately preceding the Application: (or within the past five (5) years).
  - (1) ~~Is or has been a member of the Bar, or is or was admitted to practice law in any other state or territory of the United States or the District of Columbia; and~~
  - (2) ~~Has been engaged in the Active Practice of Law.~~
- (c) **Pro Bono Service. Association and Supervision.** An Emeritus Attorney may perform the pro bono activities set forth in subsection (d) below only in association with an Approved Legal

Assistance Organization approved by the Supreme Court under this rule, and ~~under the supervision and direction of a supervising attorney.~~

(1) **Approved Legal Assistance Organization.** A nonprofit legal assistance organization seeking approval from the Supreme Court shall file a petition with the Clerk of the Supreme Court certifying that it is a nonprofit organization and reciting with specificity:

- (A) The structure of the organization and whether it accepts funds from its clients;
- (B) The major source of funds used by the organization;
- (C) The criteria used to determine potential clients' eligibility for legal services offered by the organization;
- (D) The types of legal and non-legal services offered by the organization;
- (E) The names of all members of the Bar who are employed by the organization or who regularly perform legal work for the organization; and
- (F) The existence and amount of malpractice insurance which will cover the Emeritus Attorney.

(2) **Qualifications of Supervising Attorney.** ~~A supervising attorney must be:~~

- ~~(A) An active member of the Bar;~~
- ~~(B) Employed by or volunteer for the Approved Legal Assistance Organization; and~~
- ~~(C) Responsible to the court, the Bar, the Supreme Court and the client for all services of the emeritus attorney provided pursuant to this rule.~~

(d) **Scope of Practice. Permitted Activities.**

(1) An Emeritus Attorney may:

- (A) Appear in any court or before an administrative tribunal, mediator or arbitrator in Idaho on behalf of a client of an Approved Legal Assistance Organization; ~~if the person on whose behalf the emeritus attorney is appearing has given informed consent, confirmed in writing, to that appearance and a supervising attorney has given written approval for the appearance. Certification of the written consent and approval shall be provided to the court;~~
- (B) Prepare pleadings and other documents to be filed in any court or before any administrative tribunal, mediator or arbitrator in any matter in which the Emeritus Attorney is involved; ~~provided that such pleadings and documents shall also be signed by the supervising attorney; and~~
- (C) Render legal advice and perform other appropriate legal services on behalf of a client of an Approved Legal Assistance Organization. ~~after prior consultation with, and upon the informed consent, confirmed in writing, of the client and supervising attorney.~~

~~(2) The presiding judge, hearing officer, mediator or arbitrator may determine the extent of the emeritus attorney's participation in any proceeding.~~

(e) **Limitations on the Scope of Practice.**

- (1) Emeritus Attorneys are not, and shall not represent themselves to be, active members of the Bar licensed to practice law in Idaho.
- (2) An Emeritus Attorney shall not request or receive compensation for legal services rendered, provided:
  - (A) An Approved Legal Assistance Organization may reimburse the Emeritus Attorney for actual expenses incurred while rendering services and may charge for its expenses as it may otherwise properly charge; and
  - (B) The Approved Legal Assistance Organization or client is entitled to receive all court awarded attorneys' fees for legal services rendered by the Emeritus Attorney.

(f) **Limited Licensure.** The Supreme Court may issue an Emeritus Attorney limited license upon receipt of:

- (1) A sworn statement by the Emeritus Attorney that he or she:
  - (A) Is qualified under subsection (b) above;
  - (B) Shall not ask for or receive compensation for legal services;
  - (C) Shall abide by the Idaho Rules of Professional Conduct and all other laws and rules governing lawyers admitted to the Bar; and
  - (D) Submits to the jurisdiction of the Supreme Court and Bar for disciplinary purposes;
- (2) Written confirmation from an Approved Legal Assistance Organization that:
  - (A) The Emeritus Attorney is currently associated with the organization; and
  - (B) The organization has been approved by the Supreme Court.; and
  - (C) ~~An attorney employed by or volunteering with the organization will act as supervising attorney; and~~
- (3) Verification from the highest court or agency in the state, territory or district in which the Emeritus Attorney is licensed or was previously licensed to practice law, demonstrating stating that the attorney is qualified under subsection (b) above.

(g) **Termination of License.**

- (1) An Emeritus Attorney license shall be terminated:
  - (A) Upon request by the Emeritus Attorney;
  - (B) By the Supreme Court at any time, provided that the Clerk of the Supreme Court shall mail a copy of the notice of termination to the respective attorney and Approved Legal Assistance Organization; or
  - (C) ~~Upon notice to the Supreme Court from the Approved Legal Assistance Organization that the Emeritus Attorney is no longer associated with the organization; or~~
  - (D) Upon the Supreme Court's withdrawal of its approval of the Approved Legal Assistance Organization the Emeritus Attorney is currently working with.
- (2) ~~Upon termination of the emeritus attorney's license, the supervising attorney shall immediately:~~
  - (A) ~~File in each matter pending before any court or tribunal a notice that the emeritus attorney will no longer be involved in the case; and~~
  - (B) ~~Advise all clients that the emeritus attorney will no longer be representing them.~~
- (2) To transfer to any other membership status, the Emeritus Attorney must comply with I.B.C.R. 306, if applicable.

(h) **CLE.** Emeritus Attorneys shall complete a minimum of three (3) credit hours of continuing legal education (CLE) from an Approved Legal Assistance Organization for each year the Emeritus Attorney limited license is renewed. Those CLEs shall be offered by the Approved Legal Assistance Organization free of charge to any Emeritus Attorney. Those CLEs will be included on a form in the Emeritus Attorney's annual limited license renewal.

2. That Rules 301, 302 and 304 of SECTION III be, and the same are hereby, amended as follows:

### SECTION III Licensing

**RULE 301. Definitions.** The following capitalized terms shall have the meanings set forth below:

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- (s) **Senior or Senior Member.** A member of the Bar aged ~~seventy-two (72)~~ sixty-five (65) years or older who is not licensed to practice law in Idaho and has been granted Senior status under Rule 302(d).

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**RULE 302. Licensing Requirements.** Following admission as a member of the Bar, an attorney may maintain membership as follows:

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(d) **Senior Member.**

- (1) Any Active, Inactive or Judicial Member aged ~~seventy-two (72)~~ sixty-five (65) years or older who is not engaged in the practice of law may request Transfer to Senior status by submitting a written request to the Bar.
- (2) A Senior Member must meet the licensing requirements of an Inactive Member under subsection (b) above.

**RULE 304. Annual License Fees.** Maintenance of membership in the Bar shall require payment of a non-refundable annual license fee payable on or before February 1, as prescribed below:

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(d) **Senior Members and Members Aged Seventy-Two (72) Years or Older.**

- (1) Seventy dollars (\$70) ~~for the first full calendar year following an attorney's seventy-second (72<sup>nd</sup>) birthday and every year thereafter.~~

(e) **Members Aged Seventy-Two (72) Years or Older.**

- (1) Seventy dollars (\$70) for the first full calendar year following an attorney's seventy-second (72<sup>nd</sup>) birthday and every year thereafter.

(f)(e) **Late Fees.**

(1) **Annual license fee.**

- (A) Active and House Counsel Members who fail to pay the annual license fee by February 1 shall pay an additional fee of one hundred dollars (\$100).
- (B) Inactive, Emeritus and Senior Members who fail to pay the annual license fee by February 1 shall pay an additional fee of twenty-five dollars (\$25).

(2) **MCLE.**

- (A) An attorney who requires additional time beyond the end of the attorney's reporting period to obtain the necessary credits to meet MCLE requirements shall pay an additional fee of one hundred dollars (\$100).

3. That Rules 401, 402, 403 and 405 of SECTION IV be, and the same are hereby, amended as follows:

**SECTION IV**  
**Mandatory Continuing Legal Education**

**RULE 401. Definitions.** As used in these Rules, the following terms have the meanings set forth below:

- (a) **Accredited Activity.** A course, video, recording or other activity approved for CLE credit by the Board or its designee.
- (b) **Active or Active Member.** A member of the Bar as defined in I.B.C.R. 301.
- (c) **Attendance.** Being present in an audience, either in person or through an electronic medium, at a live Accredited Activity at the time the course is actually presented, or engaging in self-study using an accredited recorded program under Rule 404(a).
- (d) **Bar.** Idaho State Bar.
- (e) **Bar Counsel.** Legal counsel for the Board.
- (f) **Board.** Board of Commissioners, the duly elected governing body of the Bar.
- (g) **Canceled.** Status of an attorney as defined in I.B.C.R. 301.
- (h) **Certificate of Compliance.** Form certifying an attorney's compliance with applicable CLE requirements.
- (i) **CLE.** Continuing legal education.
- (j) **Course Provider.** The entity or individual responsible for the planning and presentation of a CLE activity, applying for accreditation of the CLE activity and paying the respective accreditation application fee.
- (jk) **Court or Supreme Court.** Supreme Court of the State of Idaho.
- (kl) **Credit Hour.** Sixty (60) minutes of actual attendance at an Accredited Activity, rounded to the nearest quarter of an hour.
- (lm) **Executive Director.** The chief administrative officer of the Bar.
- (mn) **House Counsel or House Counsel Member.** A member of the Bar as defined in I.B.C.R. 301.
- (no) **I.B.C.R.** Idaho Bar Commission Rules.
- (op) **New Admittee Credit-Approved (NAC-Approved).** An Accredited Activity addressing Idaho practice, procedure, and/or ethics that has been designated by the Bar as NAC-Approved in accordance with standards adopted by the Board.
- (pq) **New Attorney Program.** The NAC-Approved Accredited Activity described in Rule 402(f).
- (qr) **Resigned.** Status of an attorney as defined in I.B.C.R. 301.
- (rs) **Rules.** Section IV of the I.B.C.R.
- (st) **State.** State of Idaho.

**RULE 402. Education Requirement - Report.** Except as provided in Rule 408, all Active and House Counsel Members shall complete and report CLE credits as provided in this section.

**(a) Minimum Requirements.**

- (1) Active and House Counsel Members shall complete a minimum of thirty (30) credit hours of Accredited Activity in every three (3) year reporting period.
- (2) Beginning with the attorney's next full reporting period after the effective date of these Rules and thereafter, at least three (3) CLE credits shall be in courses on legal ethics or professional responsibility, as approved by the Board or its designee. Such courses may include discussion of the Idaho Rules of Professional Conduct, professionalism and civility, client trust account administration and legal malpractice prevention.
- (3) No more than fifteen (15) of the required thirty (30) credits may be self-study credits.
- (4) Attorneys holding themselves out as specialists or certified specialists, as provided in Section X of the I.B.C.R., shall comply with the requirements of the applicable certifying organization for completion of CLE credits in the specialty area.
- (5) Fulfillment of the credit requirements specified in subsections (1) through (4) above may be concurrent.

**(b) Reporting Period.**

- (1) **General.** Except as provided in subsection (2), the reporting period for Active and House Counsel Members shall be every three (3) calendar years.

**(2) Exceptions.**

- (A) Upon an attorney's admission to the Bar as an Active or House Counsel Member, the reporting period shall begin on the date of admission and end on December 31 of the third full calendar year following admission.
- (B) The reporting period for an attorney who transfers to active status under I.B.C.R. 306 shall begin on the effective date of the transfer and end on December 31 of the third full calendar year following transfer, provided:
  - (i) Any CLE credits obtained to satisfy transfer requirements shall not apply to the new reporting period; and
  - (ii) The reporting period for an attorney who transfers to Active status after less than one (1) year on another status shall be the same reporting period that was applicable prior to the attorney's transfer from Active status.
- (C) The reporting period for an attorney whose license has been reinstated under I.B.C.R. 305 shall be the same reporting period that was applicable prior to the license cancellation, provided that any CLE credits obtained to satisfy requirements for reinstatement shall not apply to the reporting period.

**(c) Certificate of Compliance.** An attorney who is required to complete CLE credits under subsection

- (a) shall submit a written Certificate of Compliance, on a form prescribed by the Board, verifying the attorney's CLE compliance for the applicable reporting period.

- (1) **Content.** The Certificate of Compliance shall set forth the record of the attorney's compliance with these Rules during the reporting period and shall contain at least:

- (A) A list of the Accredited Activities attended;
  - (B) The dates of attendance;
  - (C) The ~~sponsoring organization~~ Course Provider;
  - (D) The hours attended, rounded to the nearest quarter of an hour; and
  - (E) The attorney's signature, under penalty of perjury.
- (2) **Place of Submission.** The Certificate of Compliance shall be submitted to the Executive Director.
- (3) **Time of Submission.** The Certificate of Compliance shall be submitted on or before February 1 of the year immediately following the conclusion of the reporting period.
- (d) **Verification of Compliance.** The Executive Director shall cause up to ten percent (10%) of the Certificates of Compliance submitted pursuant to subsection (c) to be randomly reviewed to verify compliance.
- (e) **Exemptions.** Exemptions from all or part of the CLE requirements of subsection (a) may be granted as follows:
- (1) **Eligibility.** An exemption may be granted:
    - (A) Upon a finding by the Executive Director of special circumstances constituting an undue hardship for the attorney; or
    - (B) Upon verification of the attorney's disability or severe or prolonged illness, in which case all or a specified portion of CLE credits may be earned through self-study; ~~or~~
    - (C) ~~To attorneys over the age of seventy-two (72) years.~~
  - (2) **Request for Exemption.** An attorney may request an exemption by submitting a written request to the Executive Director setting forth the grounds for the exemption.
  - (3) **Time for Submission.** A request for an exemption must be submitted to the Executive Director at least sixty (60) days prior to the end of the attorney's three (3) year reporting period.
- (f) **New Admittee Education Requirement.** Commencing on the date of admission to the Bar ~~as an Active or House Counsel Member~~ and within one (1) year thereafter, attorneys shall complete and report the following CLE credits:
- (1) **NAC-Approved CLE Credits.** Attorneys shall complete at least ten (10) NAC-Approved CLE credits, which shall be counted towards satisfying the thirty (30) credit requirement set forth in subsection (a)(1).
  - (2) **Idaho Substantive Law Requirement.** Of the ten (10) NAC-Approved CLE credits required in subsection (f)(1), attorneys shall complete Accredited Activities addressing Idaho law on ethics, civil and criminal procedure, and community property. The Board shall approve and administer the Accredited Activities that satisfy the Idaho substantive law requirements of this Rule.
  - (3) **New Attorney Program.** An attorney who has actively practiced law for less than three (3) years prior to admission to the Bar shall also complete the New Attorney Program, which shall consist of an introduction to practice, procedure and ethics. The New Attorney Program CLE credits shall count towards satisfying the NAC-Approved CLE credit requirement in subsection (f)(1).
  - (4) **Extension.** An attorney may request an extension of time to complete these requirements by filing a written petition with the Executive Director within one (1) year of admission as an Active

- or House Counsel Member. The Executive Director may grant the extension upon a showing by the attorney that completion of these requirements would cause a substantial hardship.
- (5) **Noncompliance.** An attorney's failure to complete these requirements shall be grounds for a finding of noncompliance under Rule 406.

**RULE 403. Accreditation.**

(a) **Standards.** Accreditation of CLE activities shall be consistent with the following standards:

- (1) The activity shall have significant intellectual or practical content, and the primary objective shall be to increase the attorney's professional competence and ability to deliver quality legal services in an efficient, competent and ethical manner;
- (2) The activity shall constitute an organized program of learning that addresses matters directly related to the practice of law, professional responsibility or ethical obligations of attorneys, provided:
  - (A) Courses included in the curriculum of a college or university undergraduate degree program do not qualify for accreditation as a CLE activity; and
  - (B) An attorney may receive credit for attendance at a non-legal educational program if the subject of that program relates specifically to the attorney's area of practice. For example, credit may be given for attendance at a medical-related program if the attorney's practice includes medical malpractice;
- (3) The activity shall be conducted by an individual or group qualified by practical or academic experience in the covered subjects;
- (4) The activity may include video, digital content or other presentation formats;
- (5) Materials used in the activity shall be thorough and of high quality, and should be distributed to participants prior to or during the activity; and
- (6) The activity may address law practice management to promote the efficient and competent delivery of legal services; however, no CLE credit shall be approved for marketing, client cultivation, general time management or stress reduction, computer training that is not specific to attorneys, general business topics, or vendor-sponsored activities designed solely to promote products or services.

(b) **Accreditation.** A person or ~~organization~~ Course Provider may apply for accreditation of a CLE activity by filing with the Executive Director a written application on a form prescribed by the Board.

(1) **Contents of Application.** The application shall contain:

- (A) The name of the ~~sponsoring organization~~ Course Provider;
- (B) A description of the CLE activity;
- (C) Detailed descriptions of the subjects covered in the CLE activity;
- (D) The name and qualifications of each presenter;
- (E) The time schedule of a live CLE activity or the length, in minutes, of a recorded CLE activity;
- (F) The name of the person or ~~organization~~ Course Provider requesting accreditation;



- (G) The date and location of a live CLE activity or, if the CLE activity is recorded, the date and location that the attorney completes the CLE activity for self-study credit; and
- (H) For a recorded CLE activity used for self-study credit, the date the activity was produced or initially recorded.
- (2) **Time of Filing.**
  - (A) The application may be filed prior to the CLE activity.
  - (B) An application filed more than ~~thirty~~ ninety (90) days after the CLE activity is completed ~~may be rejected as untimely~~ shall be accompanied by a fifteen dollar (\$15) late fee.
- (3) **Attendance Roster.** Upon completion of an Accredited Activity, the ~~sponsor~~ Course Provider shall forward to the Bar an attendance roster ~~specifying~~ providing the printed name and Bar number for each attorney participant and the total number of general credits and, if applicable, ethics credits, earned by each attorney participant.
- (4) **In-House and Self-Study Programs.** In-house or self-study programs that satisfy the requirements of subsection (a) may qualify for CLE credit upon written application.

**RULE 405. Processing Applications for Accreditation.** Applications for accreditation under Rule 403(b) shall be submitted to the Executive Director.

- (a) **Application Fee.** All applications for accreditation of CLE activities shall be accompanied by a forty dollar (\$40) application fee, provided:
  - (1) Applications submitted by non-profit ~~sponsors~~ Course Providers for live CLE activities that are two (2) hours or less in length and held in Idaho shall be accompanied by a twenty dollar (\$20) application fee; and
  - (2) No application fee is required for accreditation applications submitted by the Supreme Court, the Bar and its sections or district bar associations, the Idaho Law Foundation, Inc., or individual members of the Bar.
- (b) **Credit Approval or Denial.** The Executive Director shall:
  - (1) Examine and evaluate all applications for accreditation following the standards established by Rule 403(a);
  - (2) Approve or deny all or any portion of a CLE activity for which accreditation is sought; and
  - (3) Determine the number of credit hours allowed for each CLE activity.
- (c) **Decision.** The Executive Director shall provide written notice of the determination to approve or deny an accreditation application to the respective person or ~~organization~~ Course Provider.
  - (1) **Contents of Notice.**
    - (A) If the application is denied, the notice shall state the reason for the denial and advise the applicant of the right to seek review of the decision.
    - (B) If the application is approved, the notice shall state the number of credit hours allowed for the CLE activity.
  - (2) **Timing of Notice.** The notice shall be provided within twenty-one (21) days following receipt of the application.

(d) **Review.** Any person or ~~organization~~ Course Provider whose application for accreditation of a CLE activity has been denied may seek review of the Executive Director's decision by filing a written request with the Board, stating the reasons for the review request.

(1) **Time for Filing.** Any request for review of the Executive Director's decision shall be filed within fourteen (14) days of the notice.

(2) **Additional Information.** The applicant may present additional information to the Board for its consideration.

(3) **Decision of Board.** Following its review of the record, the Board shall issue a decision and advise the applicant of that decision. The decision of the Board is final.

4. That Rules 521 of SECTION V be, and the same is hereby, amended as follows:

## SECTION V Rules For Review Of Professional Conduct

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### RULE 521. Access To Information

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(b) **Confidentiality.** Prior to the filing and service of Formal Charges, a Professional Conduct matter is confidential within Bar Counsel's Office, except that the pendency, subject matter and status of a Professional Conduct matter may be disclosed by Bar Counsel if:

- (1) the Lawyer has waived confidentiality in writing;
- (2) the matter is based upon allegations that include either the conviction of a crime or ~~public~~ reciprocal discipline;
- (3) the matter is based upon allegations that have become generally known to the public; or
- (4) there is a need to notify another person or organization, including the Client Assistance Fund, in order to protect the public, the administration of justice, or the legal profession.

(c) **Public Hearings.** After the filing and service of Formal Charges or a petition for reinstatement, the ~~hearing of proceedings in~~ a Professional Conduct matter ~~is~~ are public, except for:

- (1) deliberations of a Hearing Committee, Professional Conduct Board, or Court; or
- (2) ~~aspects of the hearing information~~ with respect to which the Hearing Committee has issued a protective order ~~is pending or issued~~.

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(g) **Disclosure with Notice to Lawyer.** Except as provided in subsection (h), if Bar Counsel decides to provide nonpublic information to a requesting agency, and if the Lawyer has not signed a waiver permitting the requesting agency to obtain nonpublic information, the Lawyer shall be notified in writing at his or her last known address of the information that has been requested and the agency making the request, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the Lawyer that the information shall be released at the end of 14 days

following mailing of the notice unless the Lawyer objects to the disclosure. If the Lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains a court order requiring its release.

- (h) **Disclosure Without Notice to Lawyer.** If an otherwise authorized requesting agency has not obtained a waiver from the Lawyer to obtain nonpublic information and requests that the information be released without giving notice to the Lawyer, the requesting agency shall certify, ~~in writing, to the satisfaction of Bar Counsel~~ that:

- (1) the request is made in furtherance of an ongoing investigation into misconduct by the Lawyer;
- (2) the information is essential to that investigation; and
- (3) disclosure of the existence of the investigation to the Lawyer would seriously prejudice that investigation.

- (i) **Notice to National Discipline Data Bank.** Bar Counsel shall transmit notice of all public discipline imposed against a Lawyer, transfers to or from disability inactive status, and reinstatements to the National ~~Discipline~~ Lawyer Regulatory Data Bank maintained by the American Bar Association.

- (j) **Scope of Duty.** All ~~parties and witnesses in the process, together with all~~ officials and employees of the agency authorized to receive information under these Rules, shall conduct themselves so as to maintain the confidentiality mandated by this Rule.

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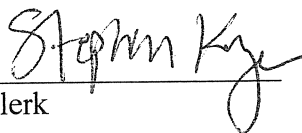
IT IS FURTHER ORDERED that the amendments shall be effective July 1, 2016.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Rules.

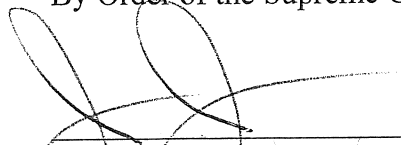
DATED this 25<sup>th</sup> day of February, 2016.

ATTEST:

Clerk



By Order of the Supreme Court



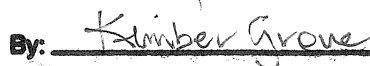
I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.

WITNESS my hand and the Seal of this Court 2/26/16

STEPHEN W. KENYON

Clerk

By:



Deputy